

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
APR 20 2005

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DONALD C. HUTCHINS)	
)	
Plaintiff)	
)	
v.)	Civil Action: 04-30126-MAP
)	
)	
CARDIAC SCIENCE, INC)	
)	
and)	
)	
)	
COMPLIENT CORPORATION.)	
)	
Defendants)	
_____)	

**PLAINTIFF'S AMENDED MEMORANDUM IN ANSWER TO COMPLIENT
CORPORATIONS INSTANTER REPLY BRIEF IN SUPPORT OF MOTION TO
DISMISS AND PLAINTIFF'S AFFIDAVIT TO SUPPORT
PERFECTED SERVICE OF PROCESS**

I. INTRODUCTION

On March 3, 2005 Attorney John J. Egan filed Defendant, Compliant Corporation's Motion for Leave to File *Instanter* Reply Brief in Support of Motion to Dismiss Amended Complaint for Failure of Service of Process, along with Compliant Corporations Reply Brief in Support of Motion to Dismiss Amended Complaint for Failure of Service of Process.

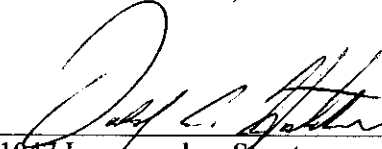
With this *Instanter* Reply Brief Attorney Egan challenges the facts contained in Plaintiff's, Donald C. Hutchins ("Hutchins") Memorandum in Opposition to Compliant's Motion to Dismiss. On April 11, 2005 Steven Lindseth, the President of the Compliant Corporation signed and returned a Waiver of Service of Summons attached herein as Exhibit A. This Waiver mitigates Compliant's arguments for failure of service of process.

CONCLUSION

The Plaintiff prays that Defendant's signed Waiver of Service of Process diffuses Defendant's allegations of failure of service of process and allows the Court to strike Defendant's Motion to Dismiss for Failure of Service of Process.

The Plaintiff
Donald C. Hutchins, Pro Se

Dated April 20, 2005



1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606

CERTIFICATE OF SERVICE


I, Richard J. Moriarty, 43 Greenacre Avenue, Longmeadow, Massachusetts 01106, hereby certify that I served a copy of the foregoing on the appropriate parties by sending a copy by registered mail to:

Randall T. Skaar, Esq., Patterson, Thunte, Skaar & Christensen, P.A., 4800 IDS Center, 80 South Eighth St., Minneapolis, MN 55402.

Paul T. Rothschild, Esq., Bacon & Wilson P.C., 33 State Street, Springfield, MA 01103.

John J. Egan, Esq., Egan, Flanagan and Cohen, P.C., 67 Market Street, P.O. Box 9035, Springfield, Massachusetts 01101-9035

Dated: 4/20/05



Richard J. Moriarty

EXHIBIT A



CALFEE, HALTER & GRISWOLD LLP
ATTORNEYS AT LAW
Cleveland

Direct Dial No. 216/622-8530
email: concil@calfee.com

April 18, 2005

VIA FEDERAL EXPRESS

Donald C. Hutchins
1047 Longmeadow Street
Longmeadow, Massachusetts 01106

Re: Hutchins v. Cardiac Science
United State District Court for the District of Massachusetts
Case No. 04-30126

Dear Mr. Hutchins:

Enclosed is an executed Waiver of Service of Summons for service of the Amended Complaint in the above-referenced action.

Very truly yours,

A handwritten signature in cursive script that reads "Colleen M. O'Neil".

Colleen M. O'Neil

CMO/rh
Enclosure

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONS

TO: Donald C. Hutchins
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Steven Lindseth, President of Compliant Corp., acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Hutchins V Cardiac Science, Inc.,
(CAPTION OF ACTION)
which is case number Civil Action 04-30126 MAP in the United States District Court
(DOCKET NUMBER)
for the Western District of Massachusetts.

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an

answer or motion under Rule 12 is not served upon you within 60 days after

March 15, 2005
(DATE REQUEST WAS SENT)

or within 90 days after that date if the request was sent outside the United States.

4/11/05
(DATE)

[Signature]
(SIGNATURE)

Printed/Typed Name: Steven Lindseth

As President of Compliant Corporation
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had